

**LAW OFFICE OF JERRY BERNHAUT**

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***VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED***

December 17, 2015

Carolyn Caldwell, President, CEO  
Desert Regional Medical Center, Inc.  
1150 N. Indian Canyon Drive  
Palm Springs, CA 92262

Jeff Koury, CEO, Western Region  
Tenet Healthcare Corporation  
17100 Euclid Street  
Fountain Valley, CA 92708

Trevor Fetter, Chairman and CEO  
Tenet Healthcare Corporation  
Corporate Offices  
1445 Ross Avenue, Suite 1400  
Dallas, Texas 75202

**Re: Notice of Violations and Intent to File Suit Under the Clean Water Act**

Dear Ms. Caldwell, Mr. Koury and Mr. Fetter:

**NOTICE**

The Clean Water Act § 505(b), 33 U.S.C. § 1365(b), ("CWA" or "Act") requires that sixty (60) days prior to the initiation of a civil action under CWA § 505(a), 33 U.S.C. § 1365(a), a citizen must give notice of the intent to sue to the alleged violator with copy to the Environmental Protection Agency ("EPA") (both local and federal), and the water pollution control agency for the State in which the violations occur. If the alleged violator is an individual or corporation, service of notice shall be accomplished by certified mail addressed to, or by personal service upon, the owner or managing agent with a copy sent to the registered agent of the corporation.

This Notice is provided on behalf of California River Watch (“River Watch”) in regard to violations of the Act, 33 U.S.C. § 1251 *et seq.*, that River Watch believes are occurring as a result of industrial operations taking place at Desert Regional Medical Center located at 1150 N. Indian Canyon Drive in Palm Springs, California. These enumerated violations are based upon River Watch’s own investigations, review of the Regional Water Quality Control Board, Los Angeles Region (“RWQCB-LA”) files for the Medical Center site, interviews with area residents, and review of other files publically available.

River Watch hereby places Desert Regional Medical Center, Inc. and Tenet Healthcare Corporation, hereafter collectively referred to as the “Discharger,” on notice that in the absence of River Watch and the Discharger resolving the environmental concerns identified in this Notice, and following the expiration of sixty (60) days from the date of this Notice, River Watch will have cause to file suit in the Federal District Court against the Discharger. By this Notice, River Watch is informing the Discharger of alleged violations of “an effluent standard or limitation,” permit condition or requirement and/or “an order issued by the Administrator or a State with respect to such standard or limitation” under CWA § 505(a)(1), 33 U.S.C. § 1365(a)(1), the Code of Federal Regulations, and the RWQCB-LA Water Quality Control Plan (“Basin Plan”), as exemplified by the Discharger’s unlawful discharges of pollutants from the medical center located at 1150 N. Indian Canyon Drive in Palm Springs, California, (“the Site”) into the Whitewater River and the Salton Sea – waters of the United States – without complying with any other required sections of the Act (*see* CWA § 301(a), 33 U.S.C. § 1311(a)).

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that *all* discharges of pollutants are prohibited with the exception of several enumerated statutory exceptions. One such exception authorizes a discharger who has been issued a permit pursuant to the National Pollutant Discharge Elimination System (“NPDES”) permitting system to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the 33 U.S.C. § 1311(a) prohibition.

The CWA requires that any notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify:

1. The specific standard, limitation, or order alleged to have been violated.

The Act provides that, absent a permit and subject to certain limitations, “the discharge of any pollutant by any person shall be unlawful.” CWA § 310(a), 33 U.S.C. § 1311(a). River Watch has identified the discharge of pollutants from the Site to waters of the United States (the Salton Sea and Whitewater River) without a National Pollutant

Discharge Elimination System (“NPDES”) permit and without complying with any other section of the Act, including CWA §§ 402(a) and 402(b), 33 U.S.C. §§ 1342(a) and 1342(b).

2. The activity alleged to constitute a violation.

River Watch contends the Discharger has no NPDES permit permitting the discharge of pollutants from the Site. River Watch further contends the Discharger is discharging pollutants including the toxic metals barium, copper, vanadium and zinc, as well as pathogens including fecal and total coliform, from the Site to the Whitewater River and Salton Sea – both waters of the United States – without complying with any other sections of the Act.

The CWA’s definition of “pollutant” is extremely broad (*see* CWA § 502(6), 33 U.S.C. § 1362(6); *Northern Plains Resource Council v. Fidelity Exploration and Development Company*, 325 F.3d 1155, 1162-1163 (9<sup>th</sup> Cir. 2003)). There is no dispute that the copper, lead and zinc, fecal and total coliform contained in discharges from the Site’s stormwater system are pollutants as defined under the Act (*see Sierra Club v. Cedar Point Oil Company Inc.* 73 F. 3d 546, 566 (5<sup>th</sup> Cir. 1996) - the definition of “pollutant” is meant to leave out very little is confirmed by the statutory definition of “pollution,” which means nothing less than the “man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.” CWA § 502(19), 33 U.S.C. § 1362(19)).

Copper and zinc are listed as toxic pollutants under 40 C.F.R. § 401.15 and by the federal Environmental Protection Agency (“EPA”). They are among 126 priority pollutants for which the EPA has developed standardized analytical text protocols (EPA methods). The Salton Sea is CWA § 303(d) listed as impaired for arsenic, chlorpyrifos, DDT, enterococcus, nutrients, salinity and selenium.

For waters like the Salton Sea which have not yet met water quality standards, the addition of unpermitted loads “contribute to excursions above water quality standards” since any additional discharge makes it that much more difficult to improve water quality to levels that satisfy those water quality standards. This is especially true of discharges that are not included in the loading calculations, such as those from commercial operations on the Site.

Numerous point sources exist within the Site including irrigation pipes, drip lines and equipment which discharge non-storm water through these discrete conveyances. These non-storm water discharges make their way to outfalls discharging to the Whitewater River and Salton Sea – both waters of the United States. Recent water sampling from outfalls on the Site indicates that copper and zinc are being discharged at concentrations above California Toxics Rule (“CTR”) limits. The CTR limit for: copper is 9µg/l continuous, 13µg/l maximum; the CTR limit for zinc is 120µg/l continuous and maximum. Sampling at the

outfalls from the Site measured 22.9µg/l for copper and 211µg/l for zinc. Other metals being discharged include barium, recently measured at 36.2 µg/l and vanadium which measured 16.2µg/l. Flows were seen from these outfalls as being continuous in nature.

Under the Act, “the term ‘point source’ means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.” CWA § 502(14), 33 U.S.C. § 1362(14). The Site’s stormwater system clearly meets this definition (*see Northwest Env’tl Defense Ctr. v. Brown*, 640 F.3d 1063 at 1071 (9<sup>th</sup> Cir. 2011) - “Storm sewers are established point sources subject to NPDES permitting requirements...” quoting *Environmental Defense Center v. EPA*, 344 F.3d 832, 841-842 n. 8 (9<sup>th</sup> Cir. 2003)). The Ninth Circuit has ruled that the collection, channelization and release to a water of the United States is a “discharge” under the CWA (*see Committee to Save the Mokelumne v. East Bay Municipal Utility District*, 13 F.3d 305, 308-309 (9<sup>th</sup> Cir. 1993)).

Multiple sources of pollution generated through activities on the Site such as vehicular and building maintenance, landscaping and maintenance of grounds, vehicular traffic, sewage and garbage, make their way to the Site’s system of storm drains. Results from recent water sampling tests indicate non-storm water discharges of pollutants from the Site exceed water quality standards. River Watch’s ongoing investigation indicates a lack of any effective structural Best Management Practices (“BMPs”) in place at the Site to prevent maintenance waters from coming into contact with pollutant sources and/or water treatment measures to prevent contaminants from being discharged from the Site without treatment in or around the storm drains.

3. The person, persons or discharger responsible for the alleged violation.

The dischargers responsible for the alleged violations set forth in this Notice are Desert Regional Medical Center, Inc. and Tenet Healthcare Corporation, collectively referred to in this Notice as the Discharger, as well as those other persons who hold an ownership or operating interest in Desert Regional Medical Center.

4. The location of the alleged violation.

The location of the various violations is the permanent address of the Desert Regional Medical Center at 1150 North Indian Canyon Drive, Palm Springs in California including the waters of the Whitewater River and Salton Sea – both waters of the United States.

5. The date or dates of violation or a reasonable range of dates during which the alleged activities occurred.

The CWA is a strict liability statute with a five-year statute of limitations. Therefore, although River Watch alleges the illegal discharges of pollutants from the Site have been occurring for more than the statutory five-year period, the range of dates covered by this Notice is December 15, 2010 through December 15, 2015. River Watch will from time to time update this Notice to include all violations which occur after the range of dates covered by this Notice. Some of the violations are continuous in nature, therefore each day constitutes a violation.

6. The full name, address, and telephone number of the person giving notice.

The entity giving this Notice is California River Watch, referred to herein as "River Watch." River Watch is an Internal Revenue Code § 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of California with headquarters located in Sebastopol, California and offices in Los Angeles, California. The mailing address of River Watch's northern California office is 290 S. Main Street, #817, Sebastopol, CA 95472. The mailing address of River Watch's southern California office is 7401 Crenshaw Blvd. #422, Los Angeles, CA 90043.

River Watch is dedicated to protecting, enhancing, and helping to restore the surface and ground waters of California including rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues associated with these environs. River Watch may be contacted via email: [US@ncriverwatch.org](mailto:US@ncriverwatch.org), or through its attorneys.

River Watch has retained legal counsel with respect to its concerns and the issues presented in this Notice. All communications regarding the same should be directed to:

Jerry Bernhaut, Esq.  
Law Office of Jerry Bernhaut  
23 Woodgreen Street  
Santa Rosa, CA 95409  
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## **BACKGROUND**

Founded in 1948, Desert Regional Medical Center is a 385-bed tertiary acute-care hospital containing Coachella Valley's only Level II trauma center, serving patients from the



San Geronio Pass to the Arizona border. On-site facilities include a Comprehensive Cancer Center, Emergency/Trauma Services, 6 operating rooms, the Institute of Clinical Orthopedics and Neurosciences, the El Mirador Imaging Center, the Center for Weight Management, and inpatient and outpatient rehabilitation. Ambulatory surgery centers are affiliated with the medical center for out-patient procedures.

The Governing Board of the Desert Regional Medical Center is responsible for financial and professional oversight of the hospital. In 1997 the Desert Healthcare District contracted with Tenet Healthcare Corporation, a healthcare services company, to operate the medical center Site.

Palm Springs is a desert resort city on the western edge of the Coachella Valley, within the Colorado Desert, located approximately 55 miles east of San Bernadino. Its population (44,552 as of the 2010 census) doubles during the winter season. Palm Springs International Airport welcomes over 1.5 million passengers a year. Palm Springs covers approximately 94 square miles making it the largest city in the county by land area. Other desert cities nearby include Cathedral City, Rancho Mirage, Desert Hot Springs, Palm Desert, Indian Wells, La Quinta, and Indio.

Palm Springs is flanked on the south by the Palm Canyon Wash and Tahquitz Creek and on the east by the Whitewater River. Tahquitz Creek is a unique resource within the Coachella Valley. Historically, a natural creek system, it extends coolness, water, vegetation and wildlife into the desert valley. Already an essential functioning part of the watershed, the capacity of the Creek was expanded and channelized in the early 1980s.

The Whitewater River is a small, permanent stream in western Riverside County, located within the endorheic Salton Sea drainage basin. The Whitewater River is defined in the Basin Plan as the reach from the headwaters in the San Geronio Mountains to (and including) the Whitewater recharge basins near the Indian Avenue crossing in the City of Palm Springs. The River creates riparian habitat which is home to many different species of birds including the endangered southwest Willow Flycatcher and the Bell's Vireo.

Under EPA regulations, water quality standard based provisions are required in NPDES permits to protect the beneficial uses of water. 40 C.F.R. § 122.44(d). The Regional Water Quality Control Board, Los Angeles Region (RWQCB-LA) has identified beneficial uses of the waters in the region and has established water quality standards for the Coachella Valley basin. These beneficial uses include contact and non-contact recreation. Non-contact recreation use is defined as uses of water for recreational activities involving proximity to water, but not normally involving contact where water ingestion would be reasonably possible – such as picnicking, sunbathing, hiking, camping, boating, hunting, sightseeing, or aesthetic enjoyment in conjunction with those activities. Water quality

considerations relevant to hiking, camping, boating, and activities related to nature studies require protection of habitats and aesthetic features.

The Basin Plan includes a narrative toxicity standard, which states that all waters shall be maintained free of toxic substances in concentrations that are lethal or that produce other detrimental responses in aquatic organisms. The Basin Plan includes a narrative oil and grease standard which states that waters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or otherwise adversely affect beneficial uses. The Basin Plan establishes Water Quality Objectives for toxic metals such as copper, nickel, and zinc.

The EPA adopted the National Toxics Rule on February 5, 1993 and the CTR on May 18, 2000. When combined with the beneficial use designations in the Basin Plan, these Rules contain water quality standards applicable to the discharges from the Site as identified in this Notice. The State Water Resources Control Board adopted the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* on April 26, 2000, containing requirements for implementation of both the National Toxics Rule and the CTR.

## **VIOLATIONS**

River Watch alleges that from December 15, 2010 through December 15, 2010, the Discharger has violated the CWA by discharging pollutants from the Site into waters of the United States without a NPDES Permit in violation of CWA § 301(a)(1), 33 U.S.C. § 1311(a), and without complying with any other section of the Act. Each and every discharge is a separate violation of the CWA. Observations indicate that the discharges from the Site are continuous in nature, and therefore the violations of the CWA are continuous in nature.

This Notice includes any and all violations evidenced by the Discharger's records and monitoring data for the Site which the Discharger has submitted (or failed to submit) to the RWQCB-LA and/or other regulatory agencies during the period December 16, 2010 through December 16, 2015. This Notice also includes any and all violations which may have occurred but for which data may not have been available or submitted or apparent from the face of the reports or data submitted by the Discharger to the RWQCB-LA or other regulatory agencies.

## **CONCLUSION**

CWA §§ 505(a)(1) and (f), 33 U.S.C. §§ 1365(a)(1) and (f) provide for citizen enforcement actions against any "person," including individuals, corporations, or

partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. An action for injunctive relief under the CWA is authorized by CWA § 505(a), 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500 per day/per violation for all violations pursuant to CWA §§ 309(d) and 505, 33 U.S.C. §§ 1319(d), 1365, *see also* 40 C.F.R. §§ 19.1-19.4. River Watch believes this Notice sufficiently states grounds for filing suit against the Discharger in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The violations by the Discharger as set forth in this Notice affect the health and enjoyment of members of River Watch who reside, work and recreate in the affected watershed area. River Watch's members use the Whitewater River, Salton Sea and the watersheds for domestic water supply, agricultural water supply, recreation, photography, nature walks and the like. Their health, property rights, and use and enjoyment of this area is specifically impaired by the Discharger's violations of the CWA as described herein.

During the 60-day notice period, River Watch is willing to discuss effective remedies for the violations noted in this Notice. However, if the Discharger wishes to pursue such discussions in the absence of litigation, it is suggested that those discussions be initiated within the next **20 days** so that they may be completed before the end of the **60-day** notice period. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when that period ends.

Very truly yours,



Jerry Bernhaut

JB:lhbm



*Service List*

Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

~~Regional Administrator~~  
✓ U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

Executive Director  
Regional Water Quality Control Board, Los Angeles Region  
320 W. 4<sup>th</sup> Street, Suite 200  
Los Angeles, CA 90013

Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, California 95812-0100

C T Corporation System - Registered Agent  
Desert Regional Medical Center, Inc.  
818 West Seventh St. Suite 930  
Los Angeles, CA 90017

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Tenet Healthcare Corporation  
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